PROSKAUER ROSE LLP Neal S. Schelberg (NSS-7985) 1585 Broadway New York, New York 10036-8299

Tel: 212.969.3000 Fax: 212.969.2900

Kevin J. Pflug (KJP-2416) 1 Newark Center Newark, NJ 07102-5211 Tel: 973.274.3200

Fax: 973.274.3299

7104



Attorneys for Plaintiff Board of Trustees of the UFCW Local 174 Pension Fund

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
BOARD OF TRUSTEES OF THE UFCW LOCAL 174 PENSION FUND,	:	
Plaintiff,	:	COMPLAINT
v.	:	Case No.:
PREMIER VEAL, INC.,		
Defendant.	:	

Plaintiff, Board of Trustees of the UFCW Local 174 Pension Fund (the "Board" or "Plaintiff"), by and through its attorneys, Proskauer Rose LLP, states by way of complaint against Defendant, Premier Veal, Inc. ("Premier Veal" or the "Company"), as follows:

- 1. This is an action seeking relief pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, including but not limited to ERISA §§ 4201 through 4301, 29 U.S.C. §§ 1381 through 1451.
- 2. The Board of Trustees of the UFCW Local 174 Pension Fund (the "Fund") established the UFCW Local 174 Pension Plan (the "Plan"), which at all relevant times was a multiemployer defined benefit pension plan, as defined by ERISA § 3(37)(A), 29 U.S.C. § 1002(37)(A), with offices at 540 West 48th Street, New York, New York 10036-1130 and 900 South Avenue, 2nd Floor, Suite 64, Staten Island, New York, 10314.
- 3. At all relevant times, Premier Veal was a New York corporation with offices at 555 West Street, New York, New York 10014, and engaged in the business of the sale of meat products.
- 4. This Court has jurisdiction to hear this case pursuant to ERISA § 4301(c), 29 U.S.C. § 1451(c).
- 5. Venue is proper in this district pursuant to ERISA § 4301(d), 29 U.S.C. § 1451(d).
- 6. Pursuant to a collective bargaining agreement between Premier Veal and UFCW Local 174, the labor organization that, for collective bargaining purposes, represented the employees of Premier Veal, Premier Veal had a duty to contribute to the Fund in accordance with the terms of the collective bargaining agreement and the Amended and Restated Agreement and Declaration of Trust governing the Fund (the "Trust Agreement").

- 7. Premier Veal made contributions to the Fund until April 2006, at which time it completely withdrew from the Plan and Fund. This withdrawal triggered the imposition of withdrawal liability on Premier Veal, pursuant to ERISA § 4203, 29 U.S.C. § 1383.
- 8. By letter dated October 27, 2006 (the "Demand Letter"), Plaintiff notified the Company that it had effected a complete withdrawal from the Plan and Fund and, therefore, was subject to the payment of withdrawal liability pursuant to ERISA §§ 4202 and 4219(b)(1), 29 U.S.C. §§ 1382 and 1399(b)(1), and the terms of the Plan and Trust Agreement. A true and correct copy of the Demand Letter and the Certified Mail Return Receipt are attached hereto and incorporated herein as Exhibit A.
- 9. As explained in the Demand Letter, the payment schedule provided for a single payment of \$2,611,300.00, or 80 equal quarterly payments of \$29,346.00. In accordance with ERISA § 4219, 29 U.S.C. § 1399(c)(2), the payments were to commence no later than 60 days after the date of the demand letter, *i.e.*, no later than December 27, 2006.
- 10. Premier Veal failed and/or refused to remit payments to the Fund in accordance with the terms of the Demand Letter, ERISA § 4219, 29 U.S.C. § 1399, and the terms of the Plan and Trust Agreement.
- 11. The Company's failure to make payments as demanded by Plaintiff in the payment schedule contained in the Demand Letter violates the terms of the Plan, the Trust Agreement and the relevant provisions of ERISA, including ERISA §§ 4219, 4221, and 4301, 29 U.S.C. §§ 1399, 1401 and 1451.
- 12. By letter dated March 8, 2007 (the "Default Letter"), Plaintiff notified Premier Veal that the Fund had not received payment as described in the Demand Letter. A true and

correct copy of the Default Letter and the Certified Mail Return Receipt are attached hereto and incorporated herein as Exhibit B.

- 13. Notwithstanding the Default Letter, the Demand Letter, and the terms of the Plan, the Trust Agreement, and ERISA, the Company has continued to fail and/or refuse to make payments to the Plan.
- 14. Pursuant to ERISA § 4219(c)(5), 29 U.S.C. § 1399(c)(5), because of Premier Veal's failure to pay its withdrawal liability to the Plan within 60 days of the date that it received the Default Letter, Premier Veal is in default and is required immediately to pay the total outstanding amount of the Company's withdrawal liability, plus accrued interest on the total outstanding liability from December 27, 2006, the due date of the first payment that was not timely made.
- 15. By letter dated, May 21, 2007, Plaintiff advised Premier Veal that it was in default of its withdrawal liability and demanded immediate payment of \$2,611,300.00, plus accrued interest of \$70,260.18. A true and correct copy of Plaintiff's May 21, 2007 letter and Certified Mail Return Receipt are attached hereto and incorporated herein as Exhibit C.
- 16. By the acts and omissions set forth above, Premier Veal violated ERISA and the terms of the Plan and Trust Agreement. As a result of Premier Veal's acts and omissions, the Fund has been damaged and has been deprived of money due and owing to the Fund.

WHEREFORE, the Board of Trustees of the UFCW Local 174 Pension Fund demands that judgment be entered in its favor and against Premier Veal, Inc. and that it be awarded \$2,611,300.00, plus accrued interest from December 27, 2006, attorneys' fees, costs of suit, and such other legal and equitable relief as the Court may deem just and appropriate.

Respectfully submitted,

PROSKAUERAOSE LLI

Neal S. Schelberg (NSS-7985)

1585 Broadway

New York, New York 10036-8299

(212) 969-3000

Kevin J. Pflug (KJP-2416) 1 Newark Center Newark, NJ 07102-5211 (973) 274-3200

Attorneys for Plaintiff
Board of Trustees of the
UFCW Local 174 Pension Fund

Dated: August 9, 2007

EXHIBIT



UFCW Local 174 Affiliated Trust Funds

540 WEST 48TH STREET • NEW YORK, NEW YORK 10036-1130 • 212 307-7007

October 27, 2006

By Certified Mail/ Return Receipt Requested

Mr. Mark Hirschorn Premier Veal, Inc. 555 West Street New York, NY 10014

Re: Notice and Demand for Payment of Withdrawal Liability

UFCW Local 174 Pension Fund

Dear Hirschorn:

According to our records, Premier Veal, Inc. (the "Company") ceased to have an obligation to contribute to the UFCW Local 174 Pension Fund (the "Fund") as of April 30, 2006. As a result, the Company has effected a complete withdrawal from the Fund, within the meaning of Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Consequently, the Company is subject to the payment of withdrawal liability to the Fund and, in accordance with the requirements of Section 4202 of ERISA, the Board of Trustees of the Fund hereby makes demand for payment of withdrawal liability, as described below.

In accordance with the Fund's method of computing withdrawal liability, we have computed the Company's withdrawal liability to the Fund to be \$2,611,300. Under Sections 4219(c)(1)(C) and (c)(3) of ERISA, the Company is required to pay the full value of its withdrawal liability in 80 quarterly installment payments, each in the amount of \$29,346. Please find enclosed a payment schedule setting forth the Company's required withdrawal liability payments. Please note that interest on each such payment shall accrue until the date on which payment is actually made. Pursuant to Section 4219(c)(4) of ERISA, the Company may elect to prepay the outstanding amount, plus accrued interest, in whole or in part, without penalty.

In accordance with Section 4219(c)(2) of ERISA, payment of withdrawal liability to the Fund is required to commence no later than 60 days after the date of this Notice, "notwithstanding any request for review or appeal of determinations of the amount of such liability." Thus, the Company's initial quarterly withdrawal liability payment is due on or before December 27, 2006. Payment of withdrawal liability should be made directly to the order of "UFCW Local 174 Pension Fund" and forwarded to the undersigned at the address above.

Please note that the liability and payment schedule set forth above and in the enclosure is an estimate that is subject to adjustment due to a change in withdrawal liability resulting from, for example, any actuarial change in the amount of unfunded vested benefits. If such an adjustment

[•] UFCW LOCAL 174 PENSION FUND • UFCW LOCAL 174 RETAIL PENSION FUND • UFCW LOCAL 174 COMMERCIAL PENSION FUND • UFCW LOCAL 174 COMMERCIAL HEALTH CARE FUND • FUR WORKERS LOCAL 3F PENSION FUND • FUR SERVICE EMPLOYEES PENSION FUND • UNITED MECHANICS 150 PENSION FUND •



becomes necessary, the Fund will submit an amended withdrawal liability statement to the Company.

Failure to commence payment of withdrawal liability or to make timely subsequent payments, as required under ERISA, will constitute "default" within the meaning of Section 4219(c)(5) of ERISA, and will entitle the Fund to require immediate payment of the full amount of withdrawal liability owed to the Fund by the Company, plus accrued interest. The Fund will assess such default penalties on the entire amount of the Company's withdrawal liability, as well as any court costs and attorneys' fees incurred in collecting such delinquency.

Under Section 4219(b)(2)(A) of ERISA, the Company has the right, within 90 days after the receipt of this Notice, to:

- (1)Request the Trustees to review any specific matter relating to the determination of the Company's withdrawal liability and the schedule of payments described herein;
- (2)Identify any inaccuracy in the determination of the amount of unfunded vested benefits allocable to the Company; and
- Furnish any additional relevant information to the Trustees. (3)

Pursuant to Section 4221 of ERISA, any dispute arising out of the Fund's determination and review must be resolved through arbitration. Either party may initiate the arbitration proceeding herein within a 60 day period after the earlier of:

- the date of the Fund's notification to the Company under Section 4219(b)(2)(B) of (a) ERISA, or
- (b) 120 days after the date of the Company's request under Section 4219(b)(2)(A) of ERISA.

Under Section 4219(c)(2) of ERISA, the Company must commence payments demanded herein in accordance with the terms and schedule set forth above, notwithstanding any request for review or appeal of determinations.

Pursuant to Section 4219(a) of ERISA, it is hereby requested that the Company advise the undersigned, within 30 days of the date of this Notice, whether the Company is or was a member of a trade or business "under common control" within the meaning of Sections 414 and 1563 of the Internal Revenue Code of 1986, as amended (i.e., a "controlled group"). If the Company is or was a member of a controlled group, it is hereby requested that the Company furnish the undersigned with the corporate (or business) names and addresses of each organization within the controlled group. Please also note whether any of these organizations contributed to the Fund at any time.

Page 3

If you have any questions, please contact the undersigned.

Sincerely,

Board of Trustees of the UFCW Local 174 Pension Fund

2 Did

Brandi Lauletti
Fund Administrator

Enclosures

cc: Amy Covert, Esq.

EN	PLOY	TER:	Prem	iler Veal, Inc.
Wi	thdrav	w During Plan Year Beginning July 1:		2005
1.	Plan' 30, 2	s unfunded value of vested benefits as of June 005	\$	87,019,383
2.	Plan empl	of all employer contributions to the Plan for Years 2000 - 2004 (exclusive of contributions of oyers who withdrew prior to the Plan Year uning July 1, 2005)	·\$	13,719,093
3.	per d	nded value of vested benefits as of June 30, 2005 ollar of employer contributions during Plan s 2000 - 2004 = (1) / (2)		6.34294
4.		uier Veal, Inc. contributions Ian Years 2000 - 2004	\$	411,686
5.	the u	uier Veal, Inc. allocable share of infunded value of vested benefits June 30, 2005 = (3) x (4)	\$	2,611,300
6.		minimis threshold: smaller of $3/4\%$ of (1) (.0075 x 019,383 = \$652,645) and \$50,000		50,000
7.	_	loyer withdrawal liability amount after de mis adjustment:		
	(a)	if (5) is less than (6)	******************************	N/A
	(b)	if (5) is equal to or more than (6), but less than \$100,000		\$0 N/A
	(c)	if (5) is between \$100,000 and the sum of \$100,000 and the		Amount in (5) less amount in (6)
	(d)	if (5) is more than the sum of \$100,000 and the amount in (6)	\$	N/A Double amount in (5) less the sum of (6) and \$100,000 2,611,300 Amount in (5)
				Annount in (3)

UFCW LOCAL 174 PENSION FUND WITHDRAWAL LIABILITY

EMPLOYER Payment Schedule

- 1. High Contribution rate (Per Member Per Month Basis ERISA Section 4219(c)(1)(C)(i)(II)
- 2. Highest average consecutive three year Contribution Base Units ERISA Section 4219(c)(1)(C)(i)(1)

Plan Year		
Beginning	Months of	Average for
July 1	Contributions	prior 3 Years
1995	451	
1996	642	
1997	580	558
1998	492	571
1999	425	499
2000	550	489
2001	533	503
2002	498	527
2003	439	490
2004	110	349

571.33

Highest 3 years Average

3. Amount of each annual payment: $= (1) \times (2)$

\$ 114,266.00

Premier Veal, Inc.

200.00

4. Payment Schedule:

	Year	Balance at	Payment	Remaining	7.50%	Balance at
	Beginning	Beginning of Year	<u>Due*</u>	<u>Balance</u>	<u>Interest</u>	End of Year
1	11/1/2006	\$2,611,300	\$114,266	\$2,497,034	\$187,278	\$2,684,312
2	11/1/2007	\$2,684,312	\$114,266	\$2,570,046	\$192,753	\$2,762,799
3	11/1/2008	\$2,762,799	\$114,266	\$2,648,533	\$198,640	\$2,847,173
4	11/1/2009	\$2,847,173	\$114,266	\$2,732,907	\$204,968	\$2,937,875
5	11/1/2010	\$2,937,875	\$114,266	\$2,823,609	\$211,771	\$3,035,380
6	11/1/2011	\$3,035,380	\$114,266	\$2,921,114	\$219,084	\$3,140,198
7	11/1/2012	\$3,140,198	\$114,266	\$3,025,932	\$226,945	\$3,252,877
8	11/1/2013	\$3,252,877	\$114,266	\$3,138,611	\$235,396	\$3,374,007
9	11/1/2014	\$3,374,007	\$114,266	\$3,259,741	\$244,481	\$3,504,222
10	11/1/2015	\$3,504,222	\$114,266	\$3,389,956	\$254,247	\$3,644,203
11	11/1/2016	\$3,644,203	\$114,266	\$3,529,937	\$264,745	\$3,794,682
12	11/1/2017	\$3,794,682	\$114,266	\$3,680,416	\$276,031	\$3,956,447
13	11/1/2018	\$3,956,447	\$114,266	\$3,842,181	\$288,164	\$4,130,345
14	11/1/2019	\$4,130,345	\$114,266	\$4,016,079	\$301,206	\$4,317,285
15	11/1/2020	\$4,317,285	\$114,266	\$4,203,019	\$315,226	\$4,518,245
16	11/1/2021	\$4,518,245	\$114,266	\$4,403,979	\$330,298	\$4,734,277
17	11/1/2022	\$4,734,277	\$114,266	\$4,620,011	\$346,501	\$4,966,512
18	11/1/2023	\$4,966,512	\$114,266	\$4,852,246	\$363,918	\$5,216,164
19	11/1/2024	\$5,216,164	\$114,266	\$5,101,898	\$382,642	\$5,484,540
20	11/1/2025	\$5,484,540	\$114,266	\$5,370,274	\$402,771	'\$5,773,045

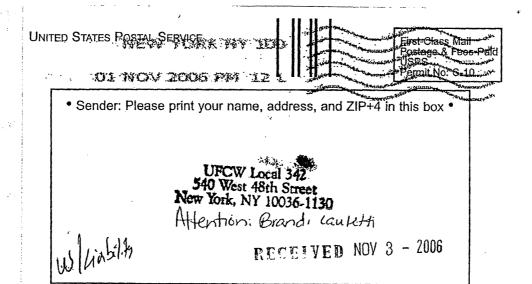
^{*} To be paid in quarterly installments

Quarterly Payments
 Quarterly Payments

\$29,346

for 80 Quarters

*	
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
(Transfer from servic XN)	A. Received by (Please Print Clearly) B. Date of pelivery C. Signature X Agelit Addressee D. Is delivery address different from item 1? Yes If YES, enter delivery address flow: No No Print Clearly B. Date of pelivery Addressee Addressee If YES, enter delivery address flow: No Agent Landise If hegistered Return Receipt in the chandise If hegistered Adil C.O.D. 4. Restricted Delivery? (Extra Fee)
PS Form 3811, March 2001 Domestic Retu	urn Receipt 102595-01-M-1424



EXHIBIT

B



UFCW Local 174 Affiliated Trust Funds

540 WEST 48TH STREET • NEW YORK, NEW YORK 10036-1130 • 212 307-7007

March 8, 2007

By Certified Mail/ Return Receipt Requested

Mark Hirschorn Premier Veal, Inc. 555 West Street New York, NY 10014

Re: Notice of Failure to Make Payments on Withdrawal Liability

UFCW Local 174 Pension Fund

Dear Mr. Hirschorn:

By letter dated October 27, 2006, UFCW Local 174 Pension Fund (the "Fund") notified Premier Veal, Inc. (the "Company") of its obligation to pay withdrawal liability in accordance with Section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (the "Demand Letter"). Specifically, the Demand Letter stated that the Company's payment of withdrawal liability to the Fund is required to commence no later than 60 days after the date of such letter, notwithstanding any request for review or appeal of the determinations of the amount of the withdrawal liability or the schedule of payments The Demand Letter assessed withdrawal liability on the Company in the amount of \$2,611,300, payable in 80 equal quarterly installment of \$29,346. The initial payment was due on or before December 27, 2006.

According to our records, the Company has not made any payment to the Fund as required under the Fund's Demand Letter. Please be advised that if the Company's failure is not cured within 60 days of receipt of this notice, the Company will be deemed in default of its withdrawal liability as provided by Section 4219(c)(5) of ERISA. The Fund will then be entitled to require immediate payment of the outstanding amount of the Company's withdrawal liability, plus accrued interest. The Fund may assess such default penalties on the entire amount of the Company's withdrawal liability, as well as any court costs and attorneys' fees incurred in collecting such delinquency.

Payment should be made to the order of "UFCW Local 174 Pension Fund" and forwarded to the undersigned at the above address.

UFCW LOCAL 174 PENSION FUND • UFCW LOCAL 174 RETAIL PENSION FUND • UFCW LOCAL 174 COMMERCIAL PENSION FUND •
 UFCW LOCAL 174 COMMERCIAL HEALTH CARE FUND • FUR WORKERS LOCAL 3F PENSION FUND • FUR SERVICE EMPLOYEES PENSION FUND •
 UNITED MECHANICS 150 PENSION FUND •



If you have any questions, please contact the undersigned.

Sincerely,

Board of Trustees of the

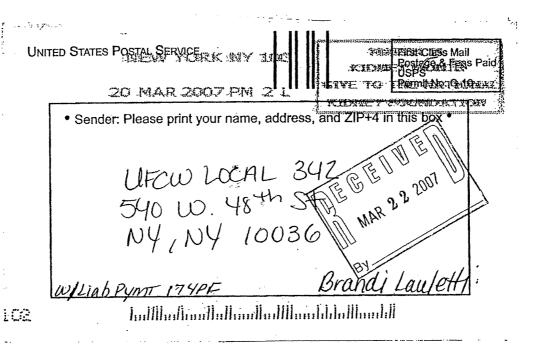
UFCW Local 174 Pension Fund

Brandi Lauletti

Fund Administrator

cc: Amy Covert, Esq.

PS Form 3811, February 2004	Domestic Return Recelpt	102595-02-M-1540
SENDER: COMPLETE THIS SEC Complete items 1, 2, and 3. Also item 4 if Restricted Delivery is de Print your name and address on so that we can return the card to Attach this card to the back of the or on the front if space permits. Article Addressed to: Premier Venuer Sec.	A. Signature Exercised. Ithe reverse by you. In emailpiece, B. Received by (Printed in YES, enter deliver)	Agent Addressee Name State of belivery Greent from items 1 Yes
ATTIN: MAKK HI	☐ Registered	☐ Express Mall ☐ Return Receipt for Merchandise ☐ C.O.D. (Extra Fee) ☐ Yes
Article Number / (Transfer from service labs)	2003 TOTO 0000 9F25	9205
PS Form 3811, February 2004	Domestic Return Receipt	102595-02-M-154



Case 1:07-cv-07104-GBD Document 1 Filed 08/09/2007 Page 19 of 24

EXHIBIT



UFCW Local 174 Affiliated Trust Funds

540 WEST 48TH STREET • NEW YORK, NEW YORK 10036-1130 • 212 307-7007

May 21, 2007

By Certified Mail/ Return Receipt Requested

Mark Hirschorn Premier Veal, Inc. 555 West Street New York, NY 10014

Re:

Default on Withdrawal Liability UFCW Local 174 Pension Fund

Dear Mr. Hirschorn:

By letter dated October 27, 2006, UFCW Local 174 Pension Fund (the "Fund") notified Premier Veal, Inc. (the "Company") of its obligation to pay withdrawal liability in accordance with Section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). At that time, the Company was provided with a demand for payment and payment schedule. By follow-up letter dated March 8, 2007, the Fund notified the Company of its failure to make payment and demanded that the Company cure the failure by making payment in accordance with the withdrawal liability payment schedule.

By letter dated March 13, 2007, Fund counsel responded to the Company's letter dated December 26, 2006, which made a request for review and appeal of the Company's withdrawal liability. In the March 13, 2007 letter, Fund counsel requested that the Company clarify the matters for review, and reiterated the Company's obligation to make payments notwithstanding any request for review. In addition, Fund counsel enclosed an Employer Questionnaire — Statement of Business Affairs, which the Company was required to complete and return within 30 days.

According to our records, the Company has not yet made payment as required, nor has it clarified the matters for review or returned the completed Employer Questionnaire – Statement of Business Affairs. As a result, and in accordance with Section 4219(c)(5) of ERISA, the Company is now in default of its withdrawal liability. The Board of Trustees hereby requires immediate payment of the outstanding amount of the Company's withdrawal liability, \$2,611,300.00, plus accrued interest of \$70,260.18, as shown in the enclosed schedule. To avoid legal action, please send a single payment of \$2,681,560.18, made directly to the order of "UFCW Local 174 Pension Fund" and forwarded to the undersigned at the address above.

If you have any questions, please contact the undersigned.

Sincerely,

Board of Trustees of the

UFCW Local 174 Pension Fund

Brandi Lauletti

Fund Administrator

cc: Amy Covert, Esq.

Enclosure

UFCW 174 Pension Fund Accrued Interest for Premier Veal, Inc.

Date of demand letter	10/27/2006
Annual interest rate	7.50%
First payment due (60 days from demand letter)	12/26/2006
Withdrawal liability amount	
Accrued interest to 5/9/2007	\$2,611,300.00
Total payment due	\$70,260.18
rom bayment ade	\$2,681,560.18

ETE THIS SECTION ON DEL ature NATA (Rusma (Ldo) Ived by (Printed Name)	☐ Agent
	C. Date of Delivery
ivery address different from iten	11? 🗆 Yes
e, enter delivery address below	r. □No
the Mair D Express Mall pistered XII Return Recei	ot for Merchandise
ired Mall C.O.D.	☐ Yes
ired Mail LI C.O.D.	
ŧ	cted Delivery? (Extra Fee)

